Panel Decision for dispute CAC-ADREU-004458

Case number	**CAC-ADREU-004458**
Time of filing	**2007-05-15 10:06:38**
Domain names	**hullutpaivat.eu, galnadagar.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Oy Hullut Päivät - Galna Dagar Ab, Ms. Christina Harjunpää**

Respondent

Organization / Name	**Applebeach Ltd, Sian Wood**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is aware of the fact that the disputed domain names have been the subject of ADR Case No 03533, with the same Complainant and EURid as Respondent.

FACTUAL BACKGROUND

The Complainant is a limited liability company registered with the Finnish Trade Register in the company name “Oy Hullut Päivät – Galna Dagar Ab” since May 29, 2002.

The Complainant applied for the registration of the domain names "hullutpaivat.eu" and "galnadagar.eu" during the second part of the Phased Registration period, deriving the right for the registration from its company name. The applications were rejected by the Registry on the basis that they did not consist of the complete name for which the prior right was claimed. The subsequent complaint to the ADR Arbitration Center was rejected on grounds that the domain names did not consist of complete name of the Complainant and further on the grounds that the documentary evidence of prior rights to the names was submitted too late i.e. during the ADR procedure.

Both disputed domain names were registered on April 3, 2007 in the name of Applebeach Ltd. (the Respondent).

The Complaint was filed on May 11, 2007 against Respondent’s two domain name registrations. The Respondent filed a Response on June 18, 2007.

On July 27, 2007, Mr P-E H Petter Rindforth was appointed as the panelist in this case. The Projected Decision Date was set to August 27, 2007.

On July 30, 2007, in accordance to Paragraph B5 (c) of the .eu Dispute Resolution Rules, the Respondent filed a Challenge of Panelist, arguing that i) as the Panel is located in the Nordic region, a biasm towards Nordic complainants could be expected and ii) the Panel in general rules in favour of complainants.

On August 9, 2007, The Czech Arbitration Court issued a decision regarding the challenge of the panelist, ruling that The Challenge made was groundless and confirming the selected Panelist as the Panel in this case.

On August 7, 2007, with reference to the fact that the language of the ADR Proceeding is English and having noticed the Complainant’s references to certain trademark rights without proper translation to English, the Panel requested the Complainant to provide the Panel with i) full English translation of all documentation that Complainant wishes to be considered as evidence, and ii) provide the Panel with a short description of the theme of evidence. The Complainant was given until August 14, 2007 to reply. The Complainant did not reply.

A. COMPLAINANT

“Galna Dagar” is a direct Swedish translation of Finnish “Hullut Päivät”. "Oy" and "Ab" in the name refer to the company type (limited liability company) in Finnish and Swedish, respectively. The Parent company of the Complainant is Stockmann Oyj, a major department store chain. “Hullut Päivät” is a biannual four day sale campaign which was first introduced in 1986 and has since established itself as the best known sale campaign in Finland.

The Complainant claimes to be the proprietor of the following national trademarks: Finnish Trademark No 118719 HULLUT PÄIVÄT, Estonian Trademark No 22769 HULLUT PÄIVÄT and Estonian Trademark No 23729 GALNA DAGAR (copies of Certificates of Registration and other related documents provided as Annexes 2 – 5 of the Complaint). Complainant further refers to the domain names “hullutpaivat.fi” and “galnadagar.fi”, registered in the name of Complainant’s parent company, Stockmann Oyj.

The Complainant states that Respondent does not use the disputed domain names and has made no reparations for use. The Complainant suggests that the two domain names were registered by the Respondent “primarily, if not solely, for the purpose of selling or renting it to the Complainant”.

The Complainant requests that the Panel issue a decision that the domain names <hullutpaivat.eu> and <galnadagar.eu> be transferred to the Complainant.

B. RESPONDENT

Respondent argues that Complainant has not been able to prove that it has any corresponding prior rights, and refer to the fact that Complainant failed to register the disputed domain names during the Phased Registration period (ADR Case No 03533). The Respondent also points out that the evidence referred to by the Complainant is not fully translated into the language of the proceeding, but seems to show that the registered trademarks are in the name of Stockman Oyj Abp and not in the name of the Complainant.

The Respondent claims to have registered <hullutpaivat.eu> and <galnadagar.eu>, together with a number of other domain names to “become a cluster of domains for offering…financial services from Gibraltar to companies in Europe”, referring to that Gibraltar is a finacial centre with favourable tax situation within the EU. The said cluster is in development.

As to the accusations of bad faith registration and use, the Respondent denies that it has any intention to use the disputed domain names in any other way than for the financial services mentioned above.

DISCUSSION AND FINDINGS

In order to render a decision, the Panel has to establish whether the conditions of Article 21(1) of Regulation (EC) No. 874/2004 (“the Regulation”) are satisfied.

A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it: (a) has been registered by its holder without rights or legitimate interest in the name; or (b) has been registered or is being used in bad faith.”

Established Rights

Article 10(1) lists as relevant prior rights, inter alia, registered national and Community trademarks and, where they are protected under national law, trade names, business identifiers and company names.

In its Complaint, the Complainant states that “the Complainant is the proprietor of the following national trademarks…”, listing trademark registrations in Finland and Estonia. The evidence provided in support of these claims are partly not translated copies of Certificate of Registrations, correspondence from local attorneys, an un-official list of a number of trademarks (including HULLUT PÄIVÄT and GALNA DAGAR), as well as documents regarding a trademark GREAT GIRLS which is obviously unrelated to this case.

The Panel has asked the Complainant to provide full English translations of all documents, as well a short description of the theme of evidence. Complainant did not respond.

The Panel notes that the Complainant is not the registrant and owner of the trademarks, but the Finnish company Stockmann Oyj Abp (Stockmann). Complainant states that Stockman is the parent company of the Complainant, but has failed to provide any evidence of affiliation. Even if Complainant had been able to prove that it is the subsidiary of Stockmann, it would not qualify as proof of the rights

mentioned in Article 10(1) of the Regulation. See ADR Case No 04438 Interactive Brokers (U.K.) Ltd, Flavio Iten vs Georg Gottfried ("The USA company Interactive Brokers LLC and the Complainant are two legally-distinct and separate entities, and the rights of one cannot be automatically expanded to another"). As in the ADR Case No 04438, the Complainant has filed no evidence of any contractual relations with Stockmann, which could give it any rights to the Marks. Further, the unofficial extract of the Company Registry does not mention any affiliation with Stockmann.

In order to be able to refer to the said trademarks as prior rights, the Complaint should have been filed by the registered trademark owner (alone or jointly with the present Complainant).

Therefore, this Panel states that the Complainant has not proved any prior rights to the trademarks HULLUT PÄIVÄT or GALNA DAGAR.

Article 10(1) is, however, not limited to registered national and Community trademarks. Also other rights, such as trade names, business identifiers and company names where they are protected under national law, are accepted as prior rights.

Apart from the claimed trademark rights, the Complaint is also based on Complainant's registered company name: Oy Hullut Päivät – Galna Dagar Ab. The only evidence provided in this respect is the unofficial extract from the Finnish Company Registry. As mentioned above, the Complainant and the disputed domain names has been the subject of the ADR Case No 03533. As the company name rights were undisputed in the said prior ADR Case, the Panel finds no reason to rule different.

Accordingly, the Panel finds that the Complainant has proved its rights to the company name Oy Hullut Päivät – Galna Dagar Ab, and that this right is recognizable under the meaning of Article 10(1) of the Regulation.

Identical or confusingly similar?

Having acknowledged that the Complainant has established prior rights to the company name Oy Hullut Päivät – Galna Dagar Ab, the Panel has to decide whether the disputed domain names are identical or confusingly similar to Complainant's company name.

The Complainant's company name consists of the words "Hullut Päivät" and "Galna Dagar", separated by a hyphen. The Panel purposely omits the "Oy" and "Ab" parts of the name, as they indicate the company type (see Section 19.4 of the Sunrise Rules), and therefore are excluded from the comparison.

The Respondent refers to the prior ADR Case No 03533, concluding that the said case shows that the Complainant has no prior rights to which the two domain names can be said to be identical or confusingly similar. It seems that the Respondent refers to Article 10(2) of the Regulation, stating that the registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists.

However, the said article refers to the registration during the Phased Registration period (also called "Sunrise"). As stated above, for the purpose of this dispute and in order to judge on the matter whether a certain domain name is registered in a speculative and abusive manner, the Panel has to establish whether the disputed domain names are identical or confusingly similar to Complainant's prior right. It is therefore no longer a question of just identity between the domain name and the prior right.

It is well-established that the TLD extension of a domain name, in this case ".eu", does not affect the domain name for the purpose of determining whether it is identical or confusingly similar pursuant to Article 21 (1) of the Regulation (see Case No. 00283, lastminute.eu).

Accordingly, <hullutpaivat> and <galnadagar> shall be compared to "Hullut Päivät – Galna Dagar".

"Galnadagar" is identical to the second part of Complainant's company name: "Galna Dagar". As "galnadagar" is the Swedish translation of the first part of Complainant's company name "Hullut Päivät" ("Crazy Days"), it would for some people also be regarded as identical or at least confusingly similar to that first part. The overall impression of "galnadagar" is therefore confusingly similar to Hullut Päivät – Galna Dagar, especially considering that both parts of the company name have the same meaning in two different languagues.

"Hullutpaivat" is not identical to any part of Complainant's name. It is, however, confusingly similar to the first part of the company name - Hullut Päivät. "Hullutpaivat" would also likely be associated to the second part of Complainant's name, at least among the finnish-swedish speaking population in Europe. The Panel therefore concludes that also "hullutpaivat" is confusingly similar to Hullut Päivät – Galna Dagar.

The Panel thus finds that the first requirement of Article 21(1) of the Regulation is satisfied for both disputed domain names.

Rights or legitimate interest?

Although not specifically stated by the Complainant, it is so understood by the Panel that Complainant has not granted Respondent any rights to reflect Complainant's company name in full or partly in any domain names.

As Respondent has no rights to the domain names, the question is whether Respondent has any legitimate interest in the same.

Pursuant to Article 21(2) of the Regulation, the legitimate interest condition is considered as fulfilled when:

a) prior to any notice of an alternative dispute resolution procedure, the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so,
b) the Respondent has been commonly known by the domain name,
c) the Respondent is making a legitimate and non commercial or fair use of the domain name, without intend to mislead consumers or harm the reputation of the name on which a right is recognized.

None of the disputed domain names are used in connection with the offering of goods or services. Both resolves to a parking web site, stating "This website is under
construction. Applebeach Ltd. will soon start her financial services for Europe on this website. For more information: info@applebeach.eu". In its Response, Respondent explains that it registered <hullutpaivat.eu> and <galnadagar.eu> as part of a cluster of domains for offering financial services. No further explanation is given, no business plan, off line advertisement or samples of the other registered domain names in the "cluster". The Panel therefore concludes that the Respondent has not used the domain names and has failed to show any demonstrable preparations of use.

Further, the Respondent is not commonly known by any of the two domain names and it is not making a legitimate and non commercial or fair use of the domain names.

Respondent has not been able to prove any rights or legitimate interests in the disputed domain names.

Registered or used in bad faith?

Although it is not necessary to establish whether the disputed domain names are registered or used in bad faith, the Panel wish to comment briefly also on this requirement:

Respondent, being a company based in Gibraltar, is far away from the Nordic language area. Still, the Respondent has chosen for its financial services, two domain names in the Swedish and Finnish languages with no obvious meaning in respect of financial services.

The explanation given by the Respondent is far-fetched and without any supporting evidence. The Panel concludes that <hullutpaivat.eu> and <galnadagar.eu> where chosen with the Complainant's sale campaign and company name in mind and that they are therefore registered in bad faith.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain names HULLUTPAIVAT, GALNADAGAR be transferred to the Complainant

PANELISTS

Name	**Petter Rindforth**

DATE OF PANEL DECISION 2007-08-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is a limited liability company registered with the Finnish Trade Register in the company name "Oy Hullut Päivät – Galna Dagar Ab". Complainant has claimed that it's parent company is Stockmann, owners of several trademark registrations for HULLUT PÄIVÄT and GALNA DAGAR ("Crazy Days" in English).

Respondent is a Gibraltar-based company, claimimg to have registered the disputed domain names and many others to be used for a future financial service.

The Panel did not consider the prior trademark rights as Complainant had not been able to prove such affiliation with the registered owner.

The Panel ordered the transfer of the disputed domain names as both were considered to be confusingly similar to the Complainant’s company name, the Respondent had not proved any legitimate rights to the domain names and both domain names were considered to have been registered in bad faith.